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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 29th July 2011

No. 6523—li/1-(B)-80/2000 (Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 21st March 2011 in Industrial Dispute Case No. 228/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s S. K. Exports (P) Ltd., 246, Lewis Road, Bhubaneswar and its workman Shri Ramesh Das and (3) three others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 228 OF 2008

Dated the 21st March 2011

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of M/s S. K. Exports (P) Ltd., .. First Party—Management
246, Lewis Road,
Bhubaneswar.

And

Shri Ramesh Das, .. Second Party—Workmen
S/o Markand,
At Barabati, P.O. Brahmania,
Via Brahmagiri, District Puri.

Shri Ratnakar Maria,
S/o Domma,
At Gokhara, P.O. Godarodanga,
District Puri.

Shri Ganesh Moharana,
S/o Gopal,
At Gokhara, P.O. Godarodanga,
District Puri.

Shri Antara Gochhayat,
S/o Late Sahadev,
At/P.O. Bentapur,
District Puri.

Appearances :

Shri R. N. Ratha, Authorised Representative .. For the First Party—Management

Shri Susanta Kumar Dash .. For the Second Party—Workmen

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short the 'Act') made by the Government of Orissa in Labour & Employment Department vide their Order No. 10201—li/1-(B)-80/2000-LE., dated the 25th July 2000 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li/21-32/2007-LE., dated the 4th April 2008. The schedule of reference runs as follows :

"Whether the action of the management of M/s S. K. Exports (P) Ltd. by terminating the services of Shri Ramesh Das, Shri Ratnakar Maria, Shri Ganesh Moharana and Shri Antara Gochhayat, Processing Workmen with effect from the 5th May 1999 is legal and/or justified ? If not, what relief the above workmen are entitled to ?"

2. In this I. D. case each of the second party-workmen has filed claim statement separately but the contents of all the claim statements are identical. The workmen have pleaded that they had been working in the Processing Unit of M/s S. K. Exports (P) Ltd. at Gokhara in the district of Puri since 15-6-1996. They were processing workmen and they used to get Rs. 1,450.00 per month as wages. They worked continuously till 5-5-1999. Their wages for the period 1/99 to 4/99 were not paid in time. Therefore, they demanded for early payment of their wages. The Management paid their dues but refused employment to the four workmen with effect from the 6th May 1999. Hence, this dispute was raised.

3. In the written statement filed by the Managing Director of M/s S. K. Exports (P) Ltd.- first party, it is pleaded that the Company came into existence only on 1-7-1996 for doing business in prawn exports. Prior to its inception it had no Processing Plant of its own. It used to purchase prawn and get it processed in the Processing Plant of M/s Ravi Ranjan Exports &

Imports Pvt. Ltd. in terms of a contract, dated the 1st July 1996. The first party-S. K. Exports (P) Ltd. had never engaged the second party-workmen as processing workmen. There is no employer-employee relationship between the Company and the second party-workmen. Therefore, the question of refusal of employment does not arise.

4. The following issues have been framed :—

ISSUES

"(i) Whether the action of the Management of M/s S. K. Exports (P) Ltd. by terminating the services of Shri Ramesh Das, Shri Ratnakar Maria, Shri Ganesh Moharana and Shri Antara Gochhayat, Processing Workmen with effect from the 5th May 1999 is legal and/or justified ?

(ii) If not, what relief the above workmen are entitled to ?"

5. On behalf of the second party, one of the four workmen has been examined as W.W. No. 1 and Exts. 1 to 4 have been marked. Similarly, on behalf of the first party, the Ex-Manager of M/s S. K. Exports (P) Ltd. has been examined as M. W. No. 1 and Exts. A to D have been marked.

FINDINGS

6. *Issue No. (i)*—Since the first party denies any kind of relationship between the parties of this I. D. Case, it is pertinent to arrive at a conclusion as to whether the workmen have established that they were engaged by the first party. The workmen are consistent in their plea that they had been working as Processing Workmen in the Processing Unit of the first party-management with effect from the 15th June 1996 and on 6-5-1999 they were denied employment. W. W. No. 1 has deposed to that effect. During cross-examination he has expressed his inability to say whether any contractor was engaged by the first party to execute the processing work in the Processing Unit. But, the second party has exhibited four letters issued by the first party to the four workmen. The letters are prepared on the letter head pad of M/s S. K. Exports (P) Ltd. and purportedly signed by the Company's Authorised Signatory. The Management has taken the stand that these letters were not issued by the first party. The contents of all the four letters are identical. In his affidavit evidence M. W. No. 1 has stated that the four letters have been manufactured by the second party members using the pad of the Management. He has further stated in his affidavit that such type of letters were never issued by the Management. Of course these letters do not contain any such things where from the relationship between the parties is explicitly forthcoming. It appears, after the industrial dispute was raised before the District Labour Officer, Puri the Management issued the letters to the second party members inviting them to come to the Management's Head Office at Bhubaneswar to discuss and settle the matter that the workmen had raised before the District Labour Officer. The second party members are not in a position to say as to who has signed on each of the four letters because the letters purport to have been issued from the Head Office and the second party members claim that they were working in the Processing Unit at Gokhara. However, on a thorough verification of the documents exhibited on

behalf of the first party I find that in the Register of Wages marked Ext. D one Sudarsan Bal has put his signatures which tally with the signatures that appear on Exts. 1 to 4. This Register of Wages is with regard to the staff of M/s S. K. Exports (P) Ltd. and said Sudarsan Bal was the then highest paid employee of that establishment. It appears, he was the then Authorised Signatory of M/s S. K. Exports (P) Ltd. and in that capacity he had issued the letters marked Exts. 1 to 4. Thus, I find that the Management has attempted to suppress the truth with regard to the employer-employee relationship by denying the genuineness of Exts. 1 to 4.

7. In the written statement it is stated that the first party had no Processing Plant of its own and that it used to purchase prawn and got it processed in the Processing Plant of M/s Ravi Ranjan Exports & Imports Pvt. Ltd. in terms of a contract dated the 1st July 1996. Exts. A is the Agreement, dated the 1st July 1996 signed between M/s S. K. Exports (P) Ltd. and M/s Ravi Ranjan Exports & Imports Pvt. Ltd. but the very genuineness of this document is clouded with doubts. The Agreement purports to have been executed on the 1st July 1996 but the stamp papers on which the Agreement has been written had been purchased on 27-7-1996. This anomaly was brought to the notice of M. W. No. 1 but he has failed to explain how the stamp papers purchased on 27-7-1996 could be used for execution of an Agreement, Dt. 1-7-1996. It appears, this Agreement has been manufactured after this dispute was raised by the workmen and only with an intention to defeat the case of the second party-workmen. In the written statement there is no pleading that M/s S. K. Exports (P) Ltd. had its own Processing Plant which was given on lease to M/s Ravi Ranjan Exports & Imports Pvt. Ltd. in terms of the Lease Agreement Dt. 1-7-1996 but while adducing evidence M. W. No. 1 has stated in his affidavit evidence that the first party had its own Processing Plant at Gokhara which was given on lease to M/s Ravi Ranjan Exports & Imports Pvt. Ltd. In the written statement it is clearly pleaded that the Management had no Processing Unit of its own and that it used to get the processing work done in the Processing Plant of others such as M/s Ravi Ranjan Exports & Imports Pvt. Ltd. on contract basis. Thus, it is found that the Management has taken different stand at different point with a view to suppress the relationship between the parties.

8. When the workmen have adduced oral evidence saying that they were the employees of the first party and that they were receiving wages from time to time from the first party by signing on the Wage Register, the first party ought to have produced documents like Wage Register, payment Vouchers, etc. maintained for its Processing Unit at Gokhara in order to prove that the names of the workmen were not there so that this Tribunal could have accepted the Management's plea on the employer-employee relationship between the parties. In cases like this a workman is not in a position to prove any document showing his appointment or termination and his receiving payment of wages/salaries from the Management. Therefore, for absence of such documents no adverse inference can be drawn against the second party-workmen. Rather, there may be an adverse inference against the Management for having failed to produce registers/documents of the relevant period duly maintained in its Processing Plant at Gokhara in order to show that the second party members were never employed in that Plant. Because, while adducing evidence the Management has admitted to

have got its own Processing Plant at Gokhara. The Deed of Agreement marked Ext. A being found to be of suspicious nature the Management cannot escape by simply taking a plea that in terms of the said Agreement M/s Ravi Ranjan Exports & Imports Pvt. Ltd. as a contractor under the first party had engaged casual labourers known as processing workers for the purpose of executing processing work in the Processing Unit and for that the first party had no direct relationship with the workmen who were engaged by the contractor. This is what M. W. No. 1 has stated in Para. 3 of his deposition but it is beyond pleadings.

9. Instead of producing the Registers maintained in the Processing Unit at Gokhara the Management has produced Registers such as Muster Roll and Registers of Wages which are in respect of the staff working in its Head Office at Bhubaneswar. The second party members have never claimed to have worked in the Head Office at any point of time. Therefore, the Management has unnecessarily exhibited the Muster Roll and the Register of Wages marked Exts. B, C and D. The Management could have shown its *bona fides* if it had produced similar registers, if any, maintained for its Processing Unit at Gokhara.

10. There was lengthy argument on the point as to whether the workmen are contract labourers and whether the Contract Labour (Regulation & Abolition) Act, 1970 is applicable to the case at hand. But, in the absence of specific pleadings and issues to that effect this Tribunal considers it unnecessary to go deep into those points as those are not germane to the points in issue.

11. Thus, it is found that though the Management appears to have got its own Processing Plant it has taken a false plea in the written statement that it had no Processing Unit of its own and that it used to get the processing work done in the Processing Plant of M/s Ravi Ranjan Exports & Imports Pvt. Ltd. Though the Management relies on the unregistered Agreement marked Ext. A, the same is found to be of suspicious nature in as much as stamp papers purchased on the 27th July 1996 have been used to create the Agreement which purports to have been executed on the 1st July 1996. It is argued that when the first party Company came to existence only on the 1st July 1996 how could the second party members claim that they were employed with effect from the 15th June 1996. Except the Agreement marked Ext. A no other papers are exhibited to prove that the Company came to existence on the 1st July 1996. Ext. A is not a relevant document to throw light as to when the first party Company came into existence. Rather, it proves that the Company was there in existence prior to the 1st July 1996 and that it was only on the 1st July 1996 it entered into agreement with another Company. But this document being found to be an antedated document no reliance can be placed on it.

The Management has taken different plea at different stages in order to take a false stand that there was no employer-employee relationship between the parties. Also, the Management has taken a false stand on Exts. 1 to 4. Above all, the Management has not produced relevant documents to show that the names of the second party-workmen were not there in the registers maintained for its Processing Unit at Gokhara. For all these reasons this Tribunal is of the considered view that the second party-members are the workmen of the first party and that they had continuously worked in the establishment of the first party from the 15th June 1996 to the 5th May 1999. Since there is no assertion that the provisions of Section 25-F of the Act

had been complied with and since it is not explained as to under what circumstances the employment of the second party members got terminated it is to be presumed that the workmen were denied employment with effect from the 6th May 1999 which amount to illegal retrenchment.

12. *Issue No. (ii)*—The workmen seek relief in the shape of reinstatement in service with full back wages. In the claim statement there is no averment that the workmen were not in any gainful employment. However, in his evidence W. W. No. 1 has stated that the second party members are not in any gainful employment ever since their termination in dispute. The first party has not adduced any evidence to show that the workmen were in gainful employment during the relevant period. The workmen had rendered three years of continuous service under the first party. It is not clarified whether they were skilled workmen. The age of the workmen at the time of their retrenchment is not ascertainable from records except that of W. W. No. 1 who has mentioned in his affidavit evidence that he was aged about 30 as on 28-8-2010. In the absence of evidence it is to be presumed that they were unskilled labourers and being able-bodied persons they must have taken up manual job elsewhere soon after their retrenchment.

M. W. No. 1 has adduced oral evidence saying that the business of the first party has been closed down since the last super-cyclone of the year 1999. This is not supported by any documentary evidence. So, such a plea may not be readily accepted. However, taking into consideration the length of employment, nature of work and the kind of strained relationship between the parties which has been exhibited during the trial, this Tribunal is of the considered view that instead of the relief of reinstatement with back wages, the second party members should be awarded with compensation. In the facts and circumstances, the first party has to pay Rs. 1,00,000.00 (Rupees one lakh) only to each of the second party members as compensation within three months of the date of publication of the Award in the official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
21-3-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
21-3-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government